

# Notice of Allowability

Application No.

10/718,770

Examiner

Christopher D. Prone

Applicant(s)

BRANCH, CHARLES L.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment after non-final rejection received on 11/3/06.
2. ☒ The allowed claim(s) is/are 1-49.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☒ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 1/19/06.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

CDP

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brad A. Schepers on 1/19/06.

The application has been amended as follows:

Claims 1, 30, 37, 40, 41 and 49 have been deleted and replaced with the following claims.

1. An expandable spinal implant, comprising:  
a body having a longitudinal axis; and an overall length, height and width, said body including a plurality of movable portions extending along said longitudinal axis and cooperating to define a non-threaded outer transverse cross section along said overall length and having a first transverse dimension along said height and a second transverse dimension along said width, said movable portions defining first and second substantially planar outer surfaces disposed generally opposite one another and extending substantially entirely across said width and adapted to engage adjacent vertebral bodies; and  
an expansion member co-acting with said movable portions to expand said outer transverse cross section along each of said first and second transverse dimensions.

30. An expandable spinal implant, comprising:  
a body having a longitudinal axis and an overall length, height and width, said body including a plurality of movable portions extending along said

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longitudinal axis and cooperating to define a generally rectangular, non-threaded outer transverse cross section along said overall length, said body having a first transverse dimension along said height and a second transverse dimension along said width; and

an expansion member co-acting with said plurality of movable portions to expand said outer transverse cross section along each of said first and second transverse dimensions.

37. The implant of claim 30, wherein said movable portions define first and second substantially planar surfaces disposed generally opposite one another and extending substantially entirely across said width and adapted to engage adjacent vertebral bodies, said planar outer surfaces defining a plurality of anchor elements adapted to engage the implant with the adjacent vertebral bodies.

40. An expandable spinal implant, comprising:

a body having a longitudinal axis and an overall length, height and width, said body including and a plurality of movable portions cooperating to define an outer cross section having a first transverse dimension along said height and a second transverse dimension along said width, said movable portions having substantially planar inner surfaces that cooperate to define an inner chamber having a substantially rectangular inner transverse cross section along said overall length, said inner surfaces defining an inward taper along said longitudinal axis; and

an expansion member having a substantially rectangular outer transverse cross section and including substantially planar outer surfaces that engage said substantially planar inner surfaces of said movable portions to expand said movable portions along each of said first and second transverse dimensions as said expansion member is displaced generally along said longitudinal axis.

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41. The implant of claim 40, wherein said movable portions cooperate to define a non-threaded outer transverse cross section along said overall length and first and second substantially planar outer surfaces disposed generally opposite one another and extending substantially entirely across said width and adapted to engage adjacent vertebral bodies.

49. An expandable spinal implant, comprising:

a body having a longitudinal axis; and an overall length, height and width, said body including a plurality of movable portions extending along said longitudinal axis and cooperating to define a non-threaded outer transverse cross section along said overall length and having a first transverse dimension along said height and a second transverse dimension along said width, said movable portions defining first and second substantially planar outer surfaces disposed generally opposite one another and extending substantially entirely across said width and adapted to engage adjacent vertebral bodies; and

means for expanding said outer transverse cross section along said first and second transverse dimensions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CP  
CDP

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